All our employees are free to become or remain members of the above-named union, or any other labor organization. We will not discriminate in regard to the hire or tenure of employment or any term or condition of employment because of membership in, or activity on behalf of, any such labor organization.

GRAFF MOTOR SUPPLY CO.,
Employer.

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

UNION MANUFACTURING COMPANY *and* AMERICAN FEDERATION OF HOSIERY WORKERS, AFL. Case No. 5-CA-717. November 25, 1953

DECISION AND ORDER

STATEMENT OF THE CASE

Upon a charge filed on April 21, 1953, by American Federation of Hosiery Workers, AFL, herein called the Union, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Acting Regional Director for the Fifth Region, issued a complaint dated April 30, 1953, against Union Manufacturing Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing, were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent (1) on or about April 13, 1953, and at all times thereafter, has continuously failed and refused to bargain collectively in good faith with the Union as the exclusive representative of its employees in an appropriate unit, although the Union had been certified as the representative of the employees in such unit on March 17, 1953; and (2) such acts and conduct constitute unfair labor practices within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act.

Thereafter, on July 9, 1953, all the parties entered into a stipulation setting forth an agreed statement of facts. The stipulation further includes provisions that: (1) The stipulation and attached exhibits, together with the charge, complaint, notice of hearing, answer of Respondent, affidavits of service of the charge, complaint, notice of hearing, and the entire record in the Union Manufacturing Company, Case No. 5-RC-1103, shall constitute the entire record herein and shall be

filed with the Board; (2) the affidavits, correspondence, and other documents attached to Respondent's answer as Exhibits Nos. 1 to 7 inclusive have been made part of the answer by Respondent for the limited purpose of affording the Respondent an opportunity to show the nature of the issues on which Respondent asserts it was entitled to a hearing in the proceeding known as Union Manufacturing Company, Case No. 5-RC-1103, and further to show that material and substantial issues of fact were raised which necessitated a hearing prior to the counting of certain challenged ballots to determine the eligibility of all challenged voters, and said documents are not made part of the record for the purpose of proving that the matters recited therein are true in fact; (3) the parties waive the taking of further testimony, or the submission of further evidence, or any hearing or further hearing before any Trial Examiner, examiner or Member of the Board, the issuance of any intermediate or proposed report or proposed order, and the filing of exceptions to any such intermediate or proposed report or proposed order; (4) the parties waive all further hearing, taking of testimony, submission of evidence, oral argument, or other procedure before the Board, provided that the parties might file, within a stated period, briefs with the Board. A memorandum brief was thereafter filed with the Board by the Respondent.

The aforesaid stipulation is hereby accepted and made a part of the record herein, and, in accordance with Section 102.50 of National Labor Relations Board Rules and Regulations - Series 6, as amended, the proceeding is hereby transferred to, and continued before, the Board. Upon the basis of the aforesaid stipulation and the entire record in the case, and upon full consideration of the Respondent's memorandum, the Board makes the following:

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

Respondent is a corporation duly organized and existing by virtue of the laws of the State of Maryland, having its principal office and place of business at Frederick, Maryland, where it is engaged in the manufacture, sale, and distribution of full-fashioned hosiery. In the course of its business operations, the Respondent annually purchases materials and supplies valued in excess of $100,000, all of which originates in, and is shipped from, States other that the State of Maryland to the Frederick plant. Respondent annually sells and delivers substantially all of its finished products, valued in excess of $100,000, to purchasers in States other than the State of Maryland.

The Respondent admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE LABOR ORGANIZATION INVOLVED

American Federation of Hosiery Workers, affiliated with the American Federation of Labor, is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The refusal to bargain

1 The representation case

On or about May 4, 1952, an economic strike commenced at the Respondent's Frederick, Maryland, plant. On June 4, 1952, the Union filed with the Board its petition for certification of representatives in the unit described below, and, on June 12, the Board issued a Decision and Direction of Election containing the provision that "all persons hired since the commencement of the strike and all strikers shall be presumptively eligible to vote, subject to challenge."[1] The election thus directed was held on June 25 under the direction and supervision of the Regional Director for the Fifth Region. The tally of ballots showed that 157 votes were cast, of which 1 was for the Union, 46 were against the Union, and 110 were challenged. The strike was still current at the time of the election.

Thereafter, on September 12, 1952, the Regional Director issued his report on challenges in which he recommended that the challenges to 21 ballots be overruled, that 2 challenges be sustained, and that a hearing be conducted with respect to the issues raised by the remaining 87 challenged ballots. The Respondent contested the eligibility of 82 of these 87 voters on the ground that they had engaged in "debarment activity" on the picket line prior to the election and contended that this activity automatically placed these individuals in the category of employees not entitled to reinstatement. As a further disqualification with respect to 23 of the 82, the Respondent contended that these individuals had obtained permanent employment with another employer prior to the election. As no exceptions were filed to the report on challenges, the Board, on October 2, 1952, adopted the recommendations and ordered that a hearing be held.

Thereafter, and prior to the commencement of any hearing, the Board issued a Supplemental Decision and Order[2] wherein, on motion of the Union, it directed that testimony be excluded from the hearing concerning alleged "debarment activity" on the part of strikers who were not permanently replaced, discharged, or denied reinstatement prior to the date of the election. The Board further directed that the Regional Director prepare a supplemental report on challenges in accord with such ruling.

On January 9, 1953, the Regional Director issued such supplemental report finding that none of the strikers whose eligibility was challenged had been permanently replaced, discharged, or denied reinstatement prior to the date of the

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[1] Case No. 5-RC-1103, original Decision and Direction of Election not reported in printed volumes of Board Decisions.

[2] 101 NLRB 1028.

election, and recommending that the challenges to the 59 ballots contested by the Respondent solely upon the grounds of "debarment activity" be overruled and that the ballots be opened and counted. The Regional Director further recommended overruling challenges to 15 other ballots contested both on the ground that these employees had engaged in "debarment activity" and on the ground that these employees had secured other permanent employment prior to the election. Both the Respondent and the Union filed timely exceptions to the supplemental report on challenges.

On February 24, the Board issued its Second Supplemental Decision and Direction [3] finding that the exceptions did not raise substantial and material issues of fact as to the Regional Director's findings and recommendations and directing that those ballots to which challenges had been overruled should be opened and counted. Pursuant thereto, the Regional Director issued his revised tally of ballots on March 6, which tally showed that the Union had obtained a majority of the valid votes cast. On March 10, counsel for the Respondent filed objections to the opening and counting of the challenged ballots. On March 17, the Board overruled the objections and certified that the Union, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the Respondent's employees in the unit described below for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. The appropriate unit

The parties agree, and the Board finds, that all production and maintenance employees at the Respondent's Frederick, Maryland, plant, excluding office clerical employees, watchmen, professional employees, and all supervisors as defined in the amended Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Representation by the Union of a majority in the appropriate unit

As previously indicated, the Board, on March 17, 1953, certified the Union as exclusive bargaining representative in the appropriate unit of the Respondent's employees. The Respondent contests the validity of this certification herein, as it did in the representation case, on the ground that the Board should have held a hearing concerning the allegations of "debarment activity" on the picket line by a substantial number of the challenged voters whose ballots were, instead, opened and counted. The Board considered this contention and Respondent's supporting arguments in the representation case resulting in the certifica-

[3] 102 NLRB 1626

tion and found the contention to be without merit inasmuch as the Respondent had not, in fact, discharged, permanently replaced, or refused to reinstate any of the challenged voters prior to the date of the election. The Respondent offers, and we find, no additional evidence or contention not considered in the prior representation matter which would support the Respondent's position.

Accordingly, we find that on March 17, 1953, and at all times thereafter, the Union was, and now is, the exclusive bargaining representative of the employees in the above-described unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

4. The refusal to bargain

The parties stipulated that by letter mailed on or about April 9, 1953, the Union requested a meeting with representatives of the Respondent for the purpose of reaching a collective-bargaining agreement. The parties also stipulated that, on or about April 13, 1953, the Respondent replied to the Union's request stating that it declined to recognize the certification of the Union as the representative of its employees. The Respondent's contention that the certification was invalid has been decided adversely to the Respondent herein. Accordingly, we find that the Respondent, on or about April 13, 1953, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of employees of the Respondent in an appropriate unit in violation of Section 8 (a) (5) of the Act, and has thereby interfered with, restrained, and coerced its employees in the exercise of their statutory rights in violation of Section 8 (a) (1).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES

The activities of the Respondent set forth in section III, above, occuring in connection with its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce.

V. THE REMEDY

Having found that the Respondent is engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action which will effectuate the policies of the Act.

Upon the basis of the above findings of fact and upon the entire record in this case, the Board makes the following:

CONCLUSIONS OF LAW

1. American Federation of Hosiery Workers, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees at the Respondent's Frederick, Maryland, full-fashioned hosiery plant, excluding office clerical employees, watchmen, professional employees, and all supervisors as defined in the amended Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. American Federation of Hosiery Workers, AFL, was on March 17, 1953, certified as, and has at all times thereafter been, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on or about April 13, 1953, and at all times thereafter, to bargain collectively with American Federation of Hosiery Workers, AFL, as the exclusive representative of all employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By the aforesaid unfair labor practices, the Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practicies affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Union Manufacturing Company, Frederick, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with American Federation of Hosiery Workers, AFL, as the exclusive representative of all production and maintenance employees at the Respondent's Frederick, Maryland, full-fashioned hosiery plant, excluding office clerical employees, watchmen, professional employees, and all supervisors as defined in the amended Act.

(b) In any other manner interfering with the efforts of American Federation of Hosiery Workers, AFL, to negotiate for, or to represent, the employees in the aforesaid bargaining unit as their exclusive bargaining agent.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Hosiery Workers, AFL, as the exclusive representative of the employees in the aforesaid bargaining unit, with respect to rates of pay, wages, hours, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant in Frederick, Maryland, copies of the notice attached hereto marked "Appendix A."[4] Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fifth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply therewith.

[4] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL BARGAIN collectively upon request with American Federation of Hosiery Workers, AFL, as the exclusive representative of all employees in the bargaining unit described herein with respect to wages, rates of pay, hours, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees at our Frederick, Maryland, plant, excluding office clerical employees, watchmen, professional employees, and all supervisors as defined in the amended Act.

WE WILL NOT engage in any acts in any manner interfering with the efforts of American Federation of Hosiery Workers, AFL, to negotiate for, or represent, the employees in the bargaining unit described above.

UNION MANUFACTURING COMPANY,
Employer.

Dated ..... By.....
(Representative) (Title)

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